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2d Session
HOUSE OF REPRESENTATIVES
REPORT
107–418

PROVIDING FOR CONSIDERATION OF H.R. 3763, CORPORATE AND AUDITING ACCOUNTABILITY, RESPONSIBILITY, AND TRANSPARENCY ACT OF 2002

APRIL 23, 2002.—Referred to the House Calendar and ordered to be printed

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Mr. SESSIONS, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 395]

The Committee on Rules, having had under consideration House Resolution 395, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002, under a structured rule. The rule provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the bill, as amended.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report shall be considered only in the order printed, may be offered only by a Member designated, shall be considered as read, shall be debatable for the time specified equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

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The waiver of all points of order includes a waiver of clause 3 of rule XIII (requiring the inclusion of certain information or statements in the committee report), because a CBO cost estimate was not yet available when the Financial Services Committee filed H. Rept. 107–414. The waiver of all points of order also includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report), because H. Rept. 107–414 was filed on Monday, April 22 and the House could consider the bill as early as Wednesday, April 24.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

Oxley—Manager's Amendment. Makes various technical and conforming changes, strikes provisions requiring companies listed on the stock exchanges to a code of ethics for senior corporate officers due to workability issues, and retains provisions regarding disclosure of changes in issuer codes of conduct. (10 minutes)

Capuano—Clarifies that two members of the public regulatory organization (PRO) must be individuals licensed to practice public accounting, two members may be individuals licensed to practice public accounting if they have not practiced within two years of being appointed, and one member must not be licensed to practice public accounting. Specifies that all members of the PRO board must meet a standard of financial literacy as determined by the SEC. (20 minutes)

Sherman—Requires auditors of publicly-traded companies to meet a minimum net capital requirement of not less than one-half of the annual audit revenue received by the accountant from issuers registered with the SEC. (20 minutes)

Kucinich—Substitute. Creates the Federal Bureau of Audits (FBA) to monitor corporate America's books by auditing all publicly-traded companies. This new agency will be a part of the Securities and Exchange Commission (SEC), but maintain appropriate independence. The SEC will set the basic rules of auditing by incorporating the generally accepted auditing standards rules and making further refinements that are "necessary and appropriate in the public interest and for the protection of investors." The FBA's integrity will be ensured by several conflict of interest provisions to ensure that American taxpayers, investors, and employees get an accurate assessment of a corporation. (20 minutes)

LaFalce—Substitute. Replaces the regulatory structure in the bill with one that requires establishment of a public regulator with specified duties and authority, modifies definitions of non-audit services to make the two bands on non-audit services included in the bill effective, provides for approval of non-audit services by the audit committee, replaces the executive responsibility provisions in the bill to require executive certification of financial statements, to improve the ability of the SEC to bar officers and directors from future service in public companies. Enables the SEC to obtain disgorgement of stock bonuses from executives who have falsified financial statements. Places limits on analyst conflicts of interest and improves corporate governance by giving audit committees oversight of auditors. Establishes an independent nominating committee for independent directors. (40 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE OXLEY OF OHIO, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, line 24, strike "study" and insert "reviews".

Page 11, line 10, insert "or" after "review".

Page 11, line 17, strike "board" and insert "organization".

Page 33, line 7, strike "DEFINITION" and insert "DEFINITIONS"; on line 8, strike "term 'beneficial owner' has the meaning" and insert "terms 'officer', 'director', and 'beneficial owner' have the meanings"; and line 9, strike "term" and insert "terms".

Page 39, strike line 5 and all that follows through page 40, line 9; and on page 40, line 10, strike "(d) CHANGES IN CODES OF CONDUCT.—".

Page 42, lines 9 and 11, strike "accountants report" and insert "accountant's report".

Page 42, line 17, insert "or her" after "his", and beginning on line 18, strike "an opinion cannot be expressed" and insert "he or she cannot express an opinion".

Page 53, line 23, strike "the role played by" and insert "whether", and on line 24, strike "in assisting" and insert "assisted".

Page 54, line 18, insert "which may have been" before "designed solely".

Page 57, line 9, insert "7, 8," after "6,".

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPUANO OF MASSACHUSETTS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 3, beginning on line 21, strike paragraph (1) of section 2(b) through page 4, line 9, and insert the following:

(1)(A) The board of such organization shall be comprised of five members—

(i) two of whom shall be persons who are licensed to practice public accounting and who have recent experience in auditing public companies;

(ii) two of whom may be persons who are licensed to practice public accounting, if such person has not worked in the accounting profession for any of the last two years prior to the date of such person's appointment to the board; and

(iii) one of whom shall be a person who has never been licensed to practice public accounting.

(B) Each member of the board of such organization shall be a person who meets such standards of financial literacy as are determined by the Commission.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHERMAN OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

In section 21 strike "and 15" and insert "and 16" and after section 13, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 14. AUDITOR MINIMUM CAPITAL.

(a) REGULATION REQUIRED.—The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered independent unless such accountant complies with such capital adequacy standards as the Commission shall prescribe by regulation.

(b) MINIMUM STANDARD.—The capital adequacy standards established by the Commission pursuant to this section shall require that the net capital of an accountant be equal to not less than one-half of the annual audit revenue received by such accountant from issuers registered with the Commission.

(c) TREATMENT OF CAPITAL AND REVENUE.—For purposes of this section—

(1) net capital shall include the sum of capital, reserves, and malpractice insurance available to the accountant for the performance of audit functions; and

(2) annual audit revenue shall include the sum of all audit fees received by the accountant, but shall not include any fees for non-audit services, as such terms are defined in regulations of the Commission in effect on the date of enactment of this Act.

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4. AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED BY REPRESENTATIVE KUCINICH OF OHIO, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Investor, Shareholder, and Employee Protection Act of 2002".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The failure of accounting firms to provide accurate audits of its clients is not a new or isolated problem.

(2) Accounting firms have been implicated in failed audits that have cost investors billions of dollars when earnings restatements sent stock prices tumbling.

(3) Auditors have an inherent conflict of interest. They are hired, and fired, by their audit clients.

(4) This conflict of interest pressures auditors to sign off on substandard financial statements rather than risk losing a large client.

(5) Auditing a public company for the benefit of small as well as large investors requires independence.

(6) Therefore the only truly independent audit is one by a governmental agency.

(7) The Federal Bureau of Audits, closely regulated by the Commission, will provide honest audits of all publicly traded companies.

SEC. 3. ESTABLISHMENT OF BUREAU.

(a) ESTABLISHMENT.—There is hereby established within the Commission an independent regulatory agency to be known as the Federal Bureau of Audits.

(b) FUNCTION OF THE BUREAU.—The Bureau shall conduct an annual audit of the financial statements that are required to be submitted by reporting issuers and to be certified under the securities laws or the rules or regulations thereunder.

(c) OFFICERS.—

(1) BUREAU HEAD.—The head of the Bureau shall be a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) ADDITIONAL OFFICERS.—There shall also be in the Bureau a Deputy Director and an Inspector General, each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(3) TERMS.—The Director, Deputy Director, and Inspector General shall be appointed for terms of 12 years, except that—

(A) the first term of office of the Deputy Director shall be eight years; and

(B) the first term of office of the Inspector General shall be 4 years.

(d) INDEPENDENCE.—Except as provided in sections 4 and 5, in the performance of their functions, the officers, employees, or other personnel of the Bureau shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Commission.

(e) ADMINISTRATIVE SUPPORT.—The Commission shall provide to the Bureau such support and facilities as the Director determines it needs to carry out its functions.

(f) RULES.—The Bureau is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions, but the Bureau may not establish any auditing standards within the jurisdiction of the Commission under sections 4 and 5.

(g) ADDITIONAL AUTHORITY.—In carrying out any of its functions, the Bureau shall have the power to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Bureau may, by one or more of its officers or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) CONFLICT OF INTEREST PROVISIONS.—A person previously employed by the Bureau may not accept employment or compensation from an issuer audited by the Bureau or an accountant that provides audit related services to an issuer audited by the Bureau for 10 years after the last day of employment at the Bureau. Any current employee of the Bureau shall be required to place all investments in a blind trust, in accordance with regulations prescribed by the Commission. The employees of the Bureau who conduct the audits shall be exempt from the civil service pay system under section 4802 of title 5, United States Code, and shall be paid salaries that are competitive with similar private sector employment.

(i) LEGAL REPRESENTATION.—Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Director of the Bureau may appear for, and represent the Bureau in, any civil action

brought in connection with any function carried out by the Bureau pursuant to this Act or as otherwise authorized by law.

SEC. 4. ASSUMPTION OF AUTHORITY BY COMMISSION OVER AUDITING STANDARDS.

(a) ASSUMPTION OF AUTHORITY.—Pursuant to its authority under the securities laws to require the certification, in accordance with the rules of the Commission, of financial statements and other documents of reporting issuers of securities, the Commission shall, by rule, establish and revise as necessary auditing standards for audits of such financial statements.

(b) INCORPORATION OF CURRENT STANDARDS.—In adopting auditing standards under this section, the Commission shall incorporate generally accepted auditing standards in effect on the date of enactment of this Act, with such modifications as the Commission determines are necessary and appropriate in the public interest and for the protection of investors.

(c) ADDITIONAL REQUIREMENTS FOR RULES.—The rules prescribed by the Commission under subsection (a)—

(1) shall be available for public comment for not less than 90 days;

(2) shall be prescribed not less than 180 days after the date of enactment of this Act; and

(3) shall be effective on the first January 1 that occurs after the end of such 180 days.

SEC. 5. FEES FOR THE RECOVERY OF COSTS OF OPERATIONS.

(a) IN GENERAL.—The Commission shall in accordance with this section assess and collect a fee on each reporting issuer whose financial statements are audited by the Bureau. This section applies as of the first fiscal year that begins after the date of enactment of this Act (referred to in this section as the "first applicable fiscal year").

(b) TOTAL FEE REVENUES; INDIVIDUAL FEE AMOUNTS.—The total fee revenues collected under subsection (a) for a fiscal year shall be the amounts appropriated under subsection (d)(2) for such fiscal year. Individual fees shall be assessed by the Commission on the basis of an estimate by the Commission of the amount necessary to ensure that the sum of the fees collected for such fiscal year equals the amount so appropriated.

(c) FEE WAIVER OR REDUCTION.—The Commission shall grant a waiver from or a reduction of a fee assessed under subsection (a) if the Commission finds that the fee to be paid will exceed the anticipated present and future costs of the operations of the Bureau.

(d) CREDITING AND AVAILABILITY OF FEES.—

(1) IN GENERAL.—Fees collected for a fiscal year pursuant to subsection (a) shall be credited to the appropriation account for salaries and expenses of the Bureau and shall be available until expended without fiscal year limitation.

(2) APPROPRIATIONS.—

(A) FIRST FISCAL YEAR.—For the first applicable fiscal year, there shall be available for the salaries and expenses of the Bureau $5,150,000,000.

(B) SUBSEQUENT FISCAL YEARS.—For each of the four fiscal years following the first applicable fiscal year, there shall be available for the salaries and expenses of the Bu-

reau an amount equal to the amount made available by paragraph (1) for the first applicable fiscal year, multiplied by the adjustment factor for such fiscal year (as defined in subsection (f)).

(e) COLLECTION OF UNPAID FEES.—In any case where the Commission does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

(f) DEFINITION OF ADJUSTMENT FACTOR.—For purposes of this section, the term "adjustment factor" applicable to a fiscal year is the lower of—

(1) the Consumer Price Index for all urban consumers (all items; United States city average) for April of the preceding fiscal year divided by such Index for April of the first applicable fiscal year; or

(2) the total of discretionary budget authority provided for programs in categories other than the defense category for the immediately preceding fiscal year (as reported in the Office of Management and Budget sequestration preview report, if available, required under section 254(c) of the Balanced Budget and Emergency Deficit Control Act of 1985) divided by such budget authority for the first applicable fiscal year (as reported in the Office of Management and Budget final sequestration report submitted for such year).

For purposes of this subsection, the terms "budget authority" and "category" have the meaning given such terms in the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 6. DEFINITIONS.

As used in this Act:

(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(2) SECURITIES LAWS.—The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(3) REPORTING ISSUER.—The term "reporting issuer" means any registrant under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or any other issuer required to file periodic reports under section 13 or 15 of such Act (15 U.S.C. 78m, 78o).

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5. AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED BY REPRESENTATIVE LAFALCE OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 40 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002".

(b) TABLE OF CONTENTS.—

SEC. 2. AUDITOR OVERSIGHT.

(a) CERTIFIED FINANCIAL STATEMENT REQUIREMENTS.—If a financial statement is required by the securities laws or any rule or regulation thereunder to be certified by an independent public or certified accountant, an accountant shall not be considered to be qualified to certify such financial statement, and the Securities and Exchange Commission shall not accept a financial statement certified by an accountant, unless such accountant—

(1) is subject to a system of review by a public regulatory organization that complies with the requirements of this section and the rules prescribed by the Commission under this section; and

(2) has not been determined in the most recent review completed under such system to be not qualified to certify such a statement.

(b) ESTABLISHMENT OF PRO.—

(1) ESTABLISHMENT REQUIRED.—Not later than 90 days after the date of enactment of this section, the Commission shall establish a public regulatory organization to perform the duties set forth in this section.

(2) CHAIRMAN.—The Chairman of the public regulatory organization shall be appointed by the Commission for a term of 5 years.

(3) APPOINTMENT OF PUBLIC REGULATORY ORGANIZATION MEMBERS.—There shall be 6 additional public regulatory organization members, who shall be selected jointly by the Chairman of the public regulatory organization and the Chairman of the Commission.

(4) ACCOUNTANT MEMBERS.—Up to 2 of the members may be present or former certified public accountants, provided such members—

(A) are not currently in public practices;

(B) have not been a person associated with a public accounting firm for a period of at least 3 years; and

(C) agree to not be a person associated with a public accounting firm or to receive consulting fees from a public accounting firm for a period of 5 years after leaving the public regulatory organization.

(5) NOMINATIONS.—In making appointments of members, the Chairman of the public regulatory organization and the Chairman of the Commission shall consult with, and make appointments from nominations received from—

(A) institutional investors;

(B) public employee pension plans;

(C) pension plans organized pursuant to the Employee Retirement Income Security Act of 1974; and

(D) pension plans organized pursuant to the Taft-Hartley Act.

(6) TERMS.—The members of the public regulatory organization shall have terms of 4 years, except that the Chairman of the public regulatory organization and the Chairman of the Commission shall adopt procedures for staggering the initial terms of the members first so appointed to provide for a reasonable overlapping of the terms of office of subsequently elected members.

(7) FULL-TIME BASIS.—The members of the public regulatory organization shall serve on a full-time basis, severing all business ties with former firms or employers prior to beginning service on the public regulatory organization.

(8) RULES.—Following selection of the initial members of the public regulatory organization, the public regulatory organization shall propose and adopt rules, which shall provide for—

(A) the operation and administration of the public regulatory organization, including the compensation of the members of the public regulatory organization, which shall be at a level comparable to similar professional positions in the private sector;

(B) the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the public regulatory organization's functions under this section;

(C) the registration of public accounting firms with the public regulatory organization pursuant to subsections (d); and

(D) the matters described in subsections (e) and (f).

(9) FUNDING OF THE PUBLIC REGULATORY ORGANIZATION.—

(A) SELF-FINANCING.—The public regulatory organization shall establish rules for the assessment and collection of fees sufficient to recover the costs and expenses of the public regulatory organization and to permit the public regulatory organization to operate on a self-financing basis.

(B) ASSESSMENT AND COLLECTION.—The fees shall be assessed on issuers that file any financial statements, reports, or other documents with the Commission under the securities laws that must be certified by a public accounting firm. The fees shall be collected through the public ac-

counting firm that certifies such statement, report, or document.

(C) PAYMENT A CONDITION OF REGISTRATION.—The public regulatory organization shall terminate or suspend the registration under subsection (d) of any public accounting firm that fails to collect and transmit a fee assessed under this subsection.

(c) PROHIBITION ON THE OFFER OF BOTH AUDIT AND CONSULTING SERVICES.—

(1) MODIFICATION OF REGULATIONS REQUIRED.—The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered independent with respect to an audit client if the accountant provides to the client the following nonaudit services, subject to such conditions and exemptions as the Commission shall prescribe:

(A) financial information system design or implementation; or

(B) internal audit services.

(2) AUDIT COMMITTEE APPROVAL OF NONAUDIT SERVICES.—The Commission shall revise its regulations pertaining to auditor independence to require that—

(A) an accountant shall not be considered to be independent for purposes of certifying the financial statements or other documents of an issuer required to be filed with the Commission under the securities laws for any fiscal year of the issuer if, during such fiscal year, the accountant provides any nonaudit services unless the provision of such nonaudit services was approved in advance by the audit committee or, in the absence of an audit committee, the equivalent board committee or the entire board of directors; and

(B) in approving such services, the audit committee shall evaluate the impact of the provision of such services on the independence of the auditor.

(3) REVIEW OF PROHIBITED NONAUDIT SERVICES.—The Commission is authorized to review the impact on the independence of auditors of the scope of services provided by auditors to issuers in order to determine whether the list of prohibited nonaudit services under paragraph (1) shall be modified. In conducting such review, the Commission shall consider the impact of the provision of a service on an auditor's independence where provision of the service creates a conflict of interest with the audit client.

(4) ADDITIONS BY RULE.—After conducting the review required by paragraph (3) and at any other time, the Commission may, by rule consistent with the protection of investors and the public interest, modify the list of prohibited nonaudit services under paragraph (1).

(5) REPORT.—The Commission shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its conduct of any reviews as required by this section. The report shall include a discussion of regulatory or leg-

islative steps that are recommended or that may be necessary to address concerns identified in the study.

(6) DEFINITIONS.—For purposes of this subsection:

(A) FINANCIAL INFORMATION SYSTEM DESIGN OR IMPLEMENTATION..—The term "financial information systems design or implementation" means designing or implementing a hardware or software system used to generate information that is significant to the audit client's financial statements taken as a whole, not including services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls.

(B) INTERNAL AUDIT SERVICES.—The term "internal audit services" means internal audit services for an audit client or an affiliate of an audit client, not including nonrecurring evaluations of discrete items or programs and operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

(7) DEADLINE FOR RULEMAKING.—The Commission shall—

(A) within 90 days after the date of enactment of this Act, propose, and

(B) within 270 days after such date, prescribe,

the revisions to its regulations required by this subsection.

(d) REGISTRATION WITH PUBLIC REGULATORY ORGANIZATION.—

(1) REGISTRATION REQUIRED.—Beginning 1 year after the date on which all initial members of the public regulatory organization have been selected in accordance with subsection (b), it shall be unlawful for a public accounting firm to furnish an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law, unless such firm is registered with the public regulatory organization.

(2) APPLICATION FOR REGISTRATION.—A public accounting firm may be registered under this subsection by filing with the public regulatory organization an application for registration in such form and containing such information as the public regulatory organization, by rule, may prescribe. Each application shall include—

(A) the names of all clients of the public accounting firm for which the firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission;

(B) financial information of the public accounting firm for its most recent fiscal year, including its annual revenues from accounting and auditing services, its assets, and its liabilities;

(C) a statement of the public accounting firm's policies and procedures with respect to quality control of its accounting and auditing practice;

(D) information relating to criminal, civil, or administrative actions or formal disciplinary proceedings pending against such firm, or any person associated with such firm, in connection with an accountant's report furnished by such firm;

(E) a list of persons associated with the public accounting firm who are certified public accountants, including any State professional license or certification number for each such person; and

(F) such other information that is reasonably related to the public regulatory organization's responsibilities as the public regulatory organization considers necessary or appropriate.

(3) PERIODIC REPORTS.—Once in each year, or more frequently as the public regulatory organization, by rule, may prescribe, each public accounting firm registered with the public regulatory organization shall submit reports to the public regulatory organization updating the information contained in its application for registration and containing such additional information that is reasonably related to the public regulatory organization's responsibilities as the public regulatory organization, by rule, may prescribe.

(4) EXEMPTIONS.—The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any public accounting firm or any accountant's report, or any class of public accounting firms or any class of accountant's reports, from any provisions of this section or the rules or regulations issued hereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) CONFIDENTIALITY.—The public regulatory organization may, by rule, designate portions of the filings required pursuant to paragraphs (2) and (3) as privileged and confidential. This paragraph shall be considered to be a statute described in section 552(b)(3)(B) of title 5, United States Code, for purposes of that section 552.

(e) DUTIES REGARDING QUALITY CONTROL.—

(1) OBJECTIVES; ATTAINMENT.—The public regulatory organization shall seek to promote a high level of professional conduct among public accounting firms registered with the public regulatory organization, to improve the quality of audit services provided by such firms, and, in general, to protect investors and promote the public interest. The public regulatory organization shall attain these objectives—

(A) by establishing standards regarding the performance of financial audits in accordance with the requirements of paragraph (2);

(B) by the direct performance of quality reviews and inspections of audits in accordance with the requirements of paragraphs (3) and (4); and

(C) by the supervision and oversight of peer review organizations in accordance with the requirements of paragraph (5).

(2) AUDIT QUALITY STANDARDS.—

(A) IN GENERAL.—The public regulatory organization shall, by rule, establish quality standards applicable to the conduct of audit services provided by public accounting firms. Such standards shall include—

(i) independence standards;

(ii) quality control standards;

(iii) professional and ethical standards; and

(iv) such other standards as the public regulatory organization determines to be necessary to carry out the objectives specified in paragraph (1).

(B) SPECIFIC CONTENTS OF STANDARDS.—In establishing the quality standards required by subparagraph (A), the public regulatory organization shall also establish—

(i) procedures for the monitoring by public accounting firms of their compliance with professional ethical standards established by the public regulatory organization, including its independence from its audit clients;

(ii) procedures for the assignment of personnel to audit engagements;

(iii) procedures for consultation within a public accounting firm or with other accountants relating to accounting and auditing questions;

(iv) procedures for the supervision of audit work;

(v) procedures for the review of decisions to accept and retain audit clients;

(vi) procedures for the internal inspection of the public accounting firms own compliance with such policies and procedures;

(vii) requirements for public accounting firms to prepare and maintain for a period of no less than 7 years, audit work papers and other information related to any audit report, in sufficient detail to support the conclusions reached in an audit report issued by a public accounting firm; and

(viii) procedures establishing "concurring" or "second" partner review systems for the evaluation and review of audit work by a partner that is not in charge of the conduct of the audit.

(3) DIRECT REVIEWS OF PUBLIC ACCOUNTING FIRMS.—The public regulatory organization shall, by rule, establish procedures for the conduct of a continuing program of inspections of each public accounting firm registered with the public regulatory organization to assess compliance by such firm, and by persons associated with such firm, with applicable provisions of this Act, the securities laws, the rules and regulations thereunder, the rules adopted by the public regulatory organization, and professional standards. Except as provided in paragraph (5), the public regulatory organization shall annually inspect each public accounting firm that audits more than 100 issuers on an ongoing annual basis, to the extent practicable, and all other public accounting firms no less than at least once every 3 years. In conducting such inspections, the public regulatory organization shall, among other things, inspect selected audit and review engagements. The review shall include evaluations of the firm's quality control procedures and compliance with all legal and ethical requirements. In connection with each review, the public regulatory organization shall prepare a report of its findings and such report, accompanied by any letter of comments by the public regulatory organization or reviewer and any letter of response from the firm under review, shall be

made available to the public. The public regulatory organization shall take any appropriate disciplinary or remedial action based on its findings after completion of such review and an opportunity for a hearing.

(4) QUALITY REVIEW OF INDIVIDUAL AUDITS.—The public regulatory organization shall, by rule, establish procedures for the conduct of direct inspection and review of individual audits of issuers and standards under which it will evaluate audit service quality. A finding by the public regulatory organization that an individual audit of an issuer did or did not meet the standards of the public regulatory organization with respect to the quality of the audit shall not be construed in any action arising out of the securities laws as indicative of compliance or noncompliance with the securities laws or with any standard of liability arising thereunder.

(5) USE OF PROFESSIONAL PEER REVIEW ORGANIZATIONS.—

(A) OPTION TO UTILIZE PEER REVIEW ORGANIZATIONS.—The public regulatory organization may, by rule, establish requirements for the use of peer review organizations for the purposes of conducting the continuing program of inspections to assess compliance as required by paragraph (3) of each public accounting firm registered with the public regulatory organization. Such rule shall provide for appropriate oversight and supervision of such peer review organization by the public regulatory organization to ensure that such inspections meet the requirements of such paragraph.

(B) PENALTIES.—If the public regulatory organization establishes requirements for the conduct of peer reviews under subparagraph (A), the violation by a public accounting firm or a person associated with such a firm of a rule of the peer review organization to which the firm belongs shall constitute grounds for—

(i) the imposition of disciplinary sanctions by the public regulatory organization pursuant to subsection (g); and

(ii) denial to the public accounting firm or person associated with such firm of the privilege of appearing or practicing before the Commission.

(6) CONFIDENTIALITY.—Except as otherwise provided by this section, all reports, memoranda, and other information provided to the public regulatory organization solely for purposes of paragraph (3) or (4), or to a peer review organization certified by the public regulatory organization, shall be confidential, unless such confidentiality is expressly waived by the person or entity that created or provided the information.

(f) DISCIPLINARY DUTIES OF PUBLIC REGULATORY ORGANIZATION.—The public regulatory organization shall have the following duties and powers:

(1) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—The public regulatory organization shall establish fair procedures for investigating and disciplining public accounting firms registered with the public regulatory organization, and persons associated with such firms, for violations of the Federal securities laws, the rules or regulations issued thereunder, the rules

adopted by the public regulatory organization, or professional standards in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission.

(2) INVESTIGATION PROCEDURES.—

(A) IN GENERAL.—The public regulatory organization may conduct an investigation of any act, practice, or omission by a public accounting firm registered with the public regulatory organization, or by any person associated with such firm, in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission that may violate any applicable provision of the Federal securities laws, the rules and regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the public regulatory organization.

(B) POWERS OF PUBLIC REGULATORY ORGANIZATION.—For purposes of an investigation under this paragraph, the public regulatory organization may, in addition to such other actions as the public regulatory organization determines to be necessary or appropriate—

(i) require the testimony of any person associated with a public accounting firm registered with the public regulatory organization, with respect to any matter which the public regulatory organization considers relevant or material to the investigation;

(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the public regulatory organization, or any person associated with such firm, wherever domiciled, that the public regulatory organization considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy of any documents or information so supplied; and

(iii) request the testimony of any person and the production of any document in the possession of any person, including a client of a public accounting firm registered with the public regulatory organization, that the public regulatory organization considers relevant or material to the investigation.

(C) SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE.—The refusal of any person associated with a public accounting firm registered with the public regulatory organization to testify, or the refusal of any such person to produce documents or otherwise cooperate with the public regulatory organization, in connection with an investigation or hearing under this section, shall be cause for suspending or barring such person from associating with a public accounting firm registered with the public regulatory organization, or such other appropriate sanction authorized by paragraph (3)(B) as the public reg-

ulatory organization shall determine. The refusal of any public accounting firm registered with the public regulatory organization to produce documents or otherwise cooperate with the public regulatory organization, in connection with an investigation or hearing under this section, shall be cause for the suspension or revocation of the registration of such firm, or such other appropriate sanction authorized by paragraph (3)(B) as the public regulatory organization shall determine.

(D) REFERRAL TO COMMISSION.—

(i) IN GENERAL.—If the public regulatory organization is unable to conduct or complete an investigation or hearing under this section because of the refusal of any client of a public accounting firm registered with the public regulatory organization, or any other person, to testify, produce documents, or otherwise cooperate with the public regulatory organization in connection with such investigation, the public regulatory organization shall report such refusal to the Commission.

(ii) INVESTIGATION.—The Commission may designate the public regulatory organization or one or more officers of the public regulatory organization who shall be empowered, in accordance with such procedures as the Commission may adopt, to subpoena witnesses, compel their attendance, and require the production of any books, papers, correspondence, memoranda, or other records relevant to any investigation by the public regulatory organization. Attendance of witnesses and the production of any records may be required from any place in the United States or any State at any designated place of hearing. Enforcement of a subpoena issued by the public regulatory organization, or an officer of the public regulatory organization, pursuant to this subparagraph shall occur in the manner provided for in section 21(c). Examination of witnesses subpoenaed pursuant to this subparagraph shall be conducted before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(iii) REFERRALS TO COMMISSION.—The public regulatory organization may refer any investigation to the Commission, as the public regulatory organization deems appropriate.

(E) IMMUNITY FROM CIVIL LIABILITY.—An employee of the public regulatory organization engaged in carrying out an investigation or disciplinary proceeding under this section shall be immune from any civil liability arising out of such investigation or disciplinary proceeding in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(3) DISCIPLINARY PROCEDURES.—

(A) DECISION TO DISCIPLINE.—In a proceeding by the public regulatory organization to determine whether a public accounting firm, or a person associated with such

firm, should be disciplined, the public regulatory organization shall bring specific charges, notify such firm or person of the charges, give such firm or person an opportunity to defend against such charges, and keep a record of such actions.

(B) SANCTIONS.—If the public regulatory organization, after conducting a review and providing an opportunity for a hearing, finds that a public accounting firm, or a person associated with such firm, has engaged in any act, practice, or omission in violation of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards, the public regulatory organization may impose such disciplinary sanctions as it deems appropriate, including—

(i) temporary or permanent revocation or suspension of registration under this section;

(ii) limitation of activities, functions, and operations;

(iii) fine;

(iv) censure;

(v) in the case of a person associated with a public accounting firm, suspension or bar from being associated with a public accounting firm registered with the public regulatory organization; and

(vi) any such other disciplinary sanction or remedial action as the public regulatory organization has established by rule that the public regulatory organization determines to be appropriate to prevent the recurrence of the violation.

(C) STATEMENT REQUIRED.—A determination by the public regulatory organization to impose a disciplinary sanction shall be supported by a written statement by the public regulatory organization that shall be made available to the public and that sets forth—

(i) any act or practice in which the public accounting firm or person associated with such firm has been found to have engaged, or which such firm or person has been found to have omitted;

(ii) the specific provision of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the public regulatory organization, or professional standards which any such act, practice, or omission is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(D) PROHIBITION ON ASSOCIATION.—It shall be unlawful—

(i) for any person as to whom a suspension or bar is in effect willfully to be or to become associated with a public accounting firm registered with the public regulatory organization, in connection with the preparation of an accountant's report on any financial statement, report, or other document filed with the Commission, without the consent of the public regulatory organization or the Commission; and

(ii) for any public accounting firm registered with the public regulatory organization to permit such a person to become, or remain, associated with such firm without the consent of the public regulatory organization or the Commission, if such firm knew or, in the exercise of reasonable care should have known, of such suspension or bar.

(4) REPORTING OF SANCTIONS.—If the public regulatory organization imposes a disciplinary sanction against a public accounting firm, or a person associated with such firm, the public regulatory organization shall report such sanction to the Commission, to the appropriate State or foreign licensing public regulatory organization or public regulatory organizations with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

(A) the name of the public accounting firm, or person associated with such firm, against whom the sanction is imposed;

(B) a description of the acts, practices, or omissions upon which the sanction is based;

(C) the nature of the sanction; and

(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the public regulatory organization deems appropriate.

(5) DISCOVERY AND ADMISSIBILITY OF PUBLIC REGULATORY ORGANIZATION MATERIAL.—

(A) DISCOVERABILITY.—

(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the public regulatory organization, and the deliberations and other proceedings of the public regulatory organization and its employees and agents in connection with an investigation or disciplinary proceeding under this section shall not be subject to any form of civil discovery, including demands for production of documents and for testimony of individuals, in connection with any proceeding in any State or Federal court, or before any State or Federal administrative agency. This subparagraph shall not apply to any information provided to the public regulatory organization that would have been subject to discovery from the person or entity that provided it to the public regulatory organization, but is no longer available from that person or entity.

(ii) EXEMPTION.—Submissions to the public regulatory organization by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a public regulatory organization proceeding (other than a public hearing), including documents generated by the public regulatory organization itself, shall be exempt from discovery to the same extent as the material described in clause (i), whether in the possession of the public regu-

latory organization or any other person, if such submission—

(I) is prepared specifically for the purpose of the public regulatory organization proceeding; and

(II) addresses the merits of the issues under investigation by the public regulatory organization.

(iii) HEARINGS PUBLIC.—Except as otherwise ordered by the public regulatory organization on its own motion or on the motion of a party, all hearings under this paragraph shall be open to the public.

(B) ADMISSIBILITY.—

(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the public regulatory organization, the deliberations and other proceedings of the public regulatory organization and its employees and agents in connection with an investigation or disciplinary proceeding under this section, the fact that an investigation or disciplinary proceeding has been commenced, and the public regulatory organization's determination with respect to any investigation or disciplinary proceeding shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

(ii) TREATMENT OF CERTAIN DOCUMENTS.—Submissions to the public regulatory organization by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a public regulatory organization proceeding, including documents generated by the public regulatory organization itself, shall be inadmissible to the same extent as the material described in clause (i), if such submission—

(I) is prepared specifically for the purpose of the public regulatory organization proceedings; and

(II) addresses the merits of the issues under investigation by the public regulatory organization.

(C) AVAILABILITY AND ADMISSIBILITY OF INFORMATION.—

(i) IN GENERAL.—All information referred to in subparagraphs (A) and (B) shall be—

(I) available to the Commission;

(II) available to any other Federal department or agency in connection with the exercise of its regulatory authority to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation;

(III) available to Federal and State authorities in connection with any criminal investigation or proceeding;

(IV) admissible in any action brought by the Commission or any other Federal department or agency pursuant to its regulatory authority, to the extent that such information would be available to such agency from the Commission as a result of a

Commission enforcement investigation and in any criminal action; and

(V) available to State licensing public regulatory organizations to the extent authorized in paragraph (6).

(ii) OTHER LIMITATIONS.—Any documents or other information provided to the Commission or other authorities pursuant to clause (i) shall be subject to the limitations on discovery and admissibility set forth in subparagraphs (A) and (B).

(6) PARTICIPATION BY STATE LICENSING PUBLIC REGULATORY ORGANIZATIONS.—

(A) NOTICE.—When the public regulatory organization institutes an investigation pursuant to paragraph (2)(A), it shall notify the State licensing public regulatory organizations in the States in which the public accounting firm or person associated with such firm engaged in the act or failure to act alleged to have violated professional standards, of the pendency of the investigation, and shall invite the State licensing public regulatory organizations to participate in the investigation.

(B) ACCEPTANCE BY STATE PUBLIC REGULATORY ORGANIZATION.—If a State licensing public regulatory organization elects to join in the investigation, its representatives shall participate, pursuant to rules established by the public regulatory organization, in investigating the matter and in presenting the evidence justifying the charges in any hearing pursuant to paragraph (3)(A).

(C) STATE SANCTIONS PERMITTED.—If the public regulatory organization or the Commission imposes a sanction upon a public accounting firm or person associated with such a firm, and that determination either is not subjected to judicial review or is upheld on judicial review, a State licensing public regulatory organization may impose a sanction on the basis of the public regulatory organization's report pursuant to paragraph (4). Any sanction imposed by the State licensing public regulatory organization under this clause shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

(g) REVIEW AND APPROVAL OF RULES.—

(1) SUBMISSION, PUBLICATION, AND COMMENT.—Each recognized public regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such recognized public regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed

rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) APPROVAL OR PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the recognized public regulatory organization consents, the Commission shall—

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the recognized public regulatory organization consents.

(3) BASIS FOR APPROVAL OR DISAPPROVAL.—The Commission shall approve a proposed rule change of a recognized public regulatory organization if it finds that such proposed rule change is consistent with the requirements of this Act and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a recognized public regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(4) RULES EFFECTIVE UPON FILING.—

(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the recognized public regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the recognized public regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the recognized public regulatory organization, or (iii) concerned solely with the administration of the recognized public regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as outside the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such ac-

tion is necessary for the protection of investors, or otherwise in accordance with the purposes of this title. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a recognized public regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this Act, the securities laws, the rules and regulations thereunder, and applicable Federal and State law. At any time within 60 days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the recognized public regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect, shall not be subject to court review, and shall not be deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.

(h) COMMISSION ACTION TO CHANGE RULES.—The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a recognized public regulatory organization as the Commission deems necessary or appropriate to insure the fair administration of the recognized public regulatory organization, to conform its rules to requirements of this Act, the securities laws, and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this Act, in the following manner:

(1) The Commission shall notify the recognized public regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the recognized public regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the recognized public regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the recognized public regulatory agency to be based,

including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under the securities laws.

(C) Any amendment to the rules of a recognized public regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes to be part of the rules of such recognized public regulatory organization and shall not be considered to be a rule of the Commission.

(i) COMMISSION OVERSIGHT OF THE PRO.—

(1) RECORDS AND EXAMINATIONS.—A public regulatory organization shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws.

(2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—A public regulatory organization shall perform such other duties or functions as the Commission, by rule or order, determines are necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this Act and the securities laws, including conducting a special review of a particular public accounting firm's quality control system or a special review of a particular aspect of some or all public accounting firms' quality control systems.

(3) ANNUAL REPORT; PROPOSED BUDGET.—

(A) SUBMISSION OF ANNUAL REPORT AND BUDGET.—A public regulatory organization shall submit an annual report and its proposed budget to the Commission for review and approval, by order, at such times and in such form as the Commission shall prescribe.

(B) CONTENTS OF ANNUAL REPORT.—Each annual report required by subparagraph (A) shall include—

(i) a detailed description of the activities of the public regulatory organization;

(ii) the audited financial statements of the public regulatory organization;

(iii) a detailed explanation of the fees and charges imposed by the public regulatory organization under subsection (b)(9); and

(iv) such other matters as the public regulatory organization or the Commission deems appropriate.

(C) TRANSMITTAL OF ANNUAL REPORT TO CONGRESS.—The Commission shall transmit each approved annual report received under subparagraph (A) to the Committee on Financial Services of the United States House of Representatives and the Committee on Banking, Housing, and Urban

Affairs of the United States Senate. At the same time it transmits a public regulatory organization's annual report under this subparagraph, the Commission shall include a written statement of its views of the functioning and operations of the public regulatory organization.

(D) PUBLIC AVAILABILITY.—Following transmittal of each approved annual report under subparagraph (C), the Commission and the public regulatory organization shall make the approved annual report publicly available.

(4) DISAPPROVAL OF ELECTION OF PRO MEMBER.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, to disapprove the election of any member of a public regulatory organization if the Commission determines, after notice and opportunity for hearing, that the person elected is unfit to serve on the public regulatory organization.

(j) CLARIFICATION OF APPLICATION OF PRO AUTHORITY.—The authority granted to any such organization in this section shall only apply to the actions of accountants related to the certification of financial statements required by securities laws and not other actions or actions for other clients of the accounting firm or any accountant that does not certify financial statements for publicly traded companies.

(k) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

rules to implement this section.

(l) EFFECTIVE DATE; TRANSITION PROVISIONS.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), subsection (a) of this section shall be effective with respect to any certified financial statement for any fiscal year that ends more than one year after the Commission recognizes a public regulatory organization pursuant to this section.

(2) DELAY IN ESTABLISHMENT OF BOARD.—If the Commission has failed to recognize any public regulatory organization pursuant to this section within one year after the date of enactment of this Act, the Commission shall perform the duties of such organization with respect to any certified financial statement for any fiscal year that ends before one year after any such board is recognized by the Commission.

SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors for any officer, director, or affiliated person of an issuer of any security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of such issuer for the purpose of rendering such financial statements materially misleading. In any

civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder.

(b) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation thereunder.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

the rules or regulations required by this section.

SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMATION.

(a) REAL-TIME ISSUER DISCLOSURES REQUIRED.—

(1) OBLIGATIONS.—Every issuer of a security registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) shall file with the Commission and disclose to the public, on a rapid and essentially contemporaneous basis, such information concerning the financial condition or operations of such issuer as the Commission determines by rule is necessary in the public interest and for the protection of investors. Such rule shall—

(A) specify the events or circumstances giving rise to the obligation to disclose or update a disclosure;

(B) establish requirements regarding the rapidity and timeliness of such disclosure;

(C) identify the means whereby the disclosure required shall be made, which shall ensure the broad, rapid, and accurate dissemination of the information to the public via electronic or other communications device;

(D) identify the content of the information to be disclosed; and

(E) without limiting the Commission's general exemptive authority, specify any exemptions or exceptions from such requirements.

(2) ENFORCEMENT.—The Commission shall have exclusive authority to enforce this section and any rule or regulation hereunder in civil proceedings.

(b) ELECTRONIC DISCLOSURE OF INSIDER TRANSACTIONS.—

(1) DISCLOSURES OF TRADING.—The Commission shall, by rule, require—

(A) that a disclosure required by section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) of the sale of any securities of an issuer, or any security futures product (as defined in section 3(a)(56) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(56))) or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) that is based in whole or in part on the securities of such issuer, by an officer or director of the issuer of those securities, or by a beneficial owner of such securities, shall be made available electronically to the Commission and to the issuer by such officer, director, or beneficial owner before the end of the next business day after the day on which the transaction occurs;

(B) that the information in such disclosure be made available electronically to the public by the Commission, to

the extent permitted under applicable law, upon receipt, but in no case later than the end of the next business day after the day on which the disclosure is received under subparagraph (A); and

(C) that, in any case in which the issuer maintains a corporate website, such information shall be made available by such issuer on that website, before the end of the next business day after the day on which the disclosure is received by the Commission under subparagraph (A).

(2) TRANSACTIONS INCLUDED.—The rule prescribed under paragraph (1) shall require the disclosure of the following transactions:

(A) Direct or indirect sales or other transfers of securities of the issuer (or any interest therein) to the issuer or an affiliate of the issuer.

(B) Loans or other extensions of credit extended to an officer, director, or other person affiliated with the issuer on terms or conditions not otherwise available to the public.

(3) OTHER FORMATS; FORMS.—In the rule prescribed under paragraph (1), the Commission shall provide that electronic filing and disclosure shall be in lieu of any other format required for such disclosures on the day before the date of enactment of this subsection. The Commission shall revise such forms and schedules required to be filed with the Commission pursuant to paragraph (1) as necessary to facilitate such electronic filing and disclosure.

SEC. 5. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules

and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) DEFINITION.—For purposes of this section, the term "beneficial owner" has the meaning provided such term in rules or regulations issued by the Securities and Exchange Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DISCLOSURES.

(a) MODIFICATION OF REGULATIONS REQUIRED.—The Commission shall revise its regulations under the securities laws pertaining to the disclosures required in periodic financial reports and registration statements to require such reports to include adequate and appropriate disclosure of—

(1) the issuer's off-balance sheet transactions and relationships with unconsolidated entities or other persons, to the extent they are not disclosed in the financial statements and are reasonably likely to materially affect the liquidity or the availability of, or requirements for, capital resources, or the financial condition or results of operations of the issuer; and

(2) loans extended to officers, directors, or other persons affiliated with the issuer on terms or conditions that are not otherwise available to the public.

(b) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) within 90 days after the date of enactment of this Act, propose, and

(2) within 270 days after such date, prescribe,

the revisions to its regulations required by subsection (a).

(c) ANALYSIS REQUIRED.—

(1) TRANSPARENCY, COMPLETENESS, AND USEFULNESS OF FINANCIAL STATEMENTS.—The Commission shall conduct an analysis of the extent to which, consistent with the protection of investors and the public interest, disclosure of additional or reorganized information may be required to improve the transparency, completeness, or usefulness of financial statements and other corporate disclosures filed under the securities laws.

(2) ALTERNATIVES TO BE CONSIDERED.—In conducting the analysis required by paragraph (1), the Commission shall consider—

(A) requiring the identification of the key accounting principles that are most important to the issuer's reported financial condition and results of operation, and that require management's most difficult, subjective, or complex judgments;

(B) requiring an explanation, where material, of how different available accounting principles applied, the judgments made in their application, and the likelihood of materially different reported results if different assumptions or conditions were to prevail;

(C) in the case of any issuer engaged in the business of trading non-exchange traded contracts, requiring an explanation of such trading activities when such activities require the issuer to account for contracts at fair value, but

for which a lack of market price quotations necessitates the use of fair value estimation techniques;

(D) establishing requirements relating to the presentation of information in clear and understandable format and language; and

(E) requiring such other disclosures, included in the financial statements or in other disclosure by the issuer, as would in the Commission's view improve the transparency of such issuer's financial statements and other required corporate disclosures.

(3) RULES REQUIRED.—If the Commission, on the basis of the analysis required by this subsection, determines that it is necessary in the public interest or for the protection of investors and would improve the transparency of issuer financial statements, the Commission may prescribe rules reflecting the results of such analysis and the considerations required by paragraph (2). In prescribing such rules, the Commission may seek to minimize the paperwork and cost burden on the issuer consistent with achieving the public interest and investor protection purposes of such rules.

SEC. 7. IMPROVEMENTS IN REPORTING ON INSIDER TRANSACTIONS AND RELATIONSHIPS.

(a) SPECIFIC OBJECTIVES.—The Commission shall initiate a proceeding to propose changes in its rules and regulations with respect to financial reporting to improve the transparency and clarity of the information available to investors and to require increased financial disclosure with respect to the following:

(1) INSIDER RELATIONSHIPS AND TRANSACTIONS.—Relationships and transactions—

(A) between the issuer, affiliates of the issuer, and officers, directors, or employees of the issuer or such affiliates; and

(B) between officers, directors, employees, or affiliates of the issuer and entities that are not otherwise affiliated with the issuer,

to the extent such arrangement or transaction creates a conflict of interest for such persons. Such disclosure shall provide a description of such elements of the transaction as are necessary for an understanding of the business purpose and economic substance of such transaction (including contingencies). The disclosure shall provide sufficient information to determine the effect on the issuer's financial statements and describe compensation arrangements of interested parties to such transactions.

(2) RELATIONSHIPS WITH PHILANTHROPIC ORGANIZATIONS.—Relationships between the registrant or any executive officer of the registrant and any not-for-profit organization on whose board a director or immediate family member serves or of which a director or immediate family member serves as an officer or in a similar capacity. Relationships that shall be disclosed include contributions to the organization in excess of $10,000 made by the registrant or any executive officer in the last five years and any other activity undertaken by the registrant or any executive officer that provides a material benefit to the organization. Material benefit includes lobbying.

(3) INSIDER-CONTROLLED AFFILIATES.—Relationships in which the registrant or any executive officer exercises significant control over an entity in which a director or immediate family member owns an equity interest or to which a director or immediate family member has extended credit. Significant control should be defined with reference to the contractual and governance arrangements between the registrant or executive officer, as the case may be, and the entity.

(4) JOINT OWNERSHIP.—Joint ownership by a registrant or executive officer and a director or immediate family member of any real or personal property.

(5) PROVISION OF SERVICES BY RELATED PERSONS.—The provision of any professional services, including legal, financial advisory or medical services, by a director or immediate family member to any executive officer of the registrant in the last five years.

(b) DEADLINES.—The Commission shall complete the rulemaking required by this section within 180 days after the date of enactment of this Act.

SEC. 8. ENHANCED OVERSIGHT OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Securities and Exchange Commission shall review disclosures made by issuers pursuant to the Securities Exchange Act of 1934 (including reports filed on form 10–K) on a basis that is more regular and systematic than that in practice on the date of enactment on this Act. Such review shall include a review of an issuer's financial statements.

(b) RISK RATING SYSTEM.—For purposes of the reviews required by subsection (a), the Commission shall establish a risk rating system whereby issuers receive a risk rating by the Commission, which shall be used to determine the frequency of such reviews. In designing such a risk rating system the Commission shall consider, among other factors the following:

(1) Emerging companies with disparities in price to earning ratios.

(2) Issuers with the largest market capitalization.

(3) Issuers whose operations significantly impact any material sector of the economy.

(4) Systemic factors such as the effect on niche markets or important subsectors of the economy.

(5) Issuers that experience significant volatility in their stock price as compared to other issuers.

(6) Any other factor the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer be reviewed less than once every three years by the Commission.

(d) PROHIBITION OF DISCLOSURE OF RISK RATING.—Notwithstanding any other provision of law, the Commission shall not disclose the risk rating of any issuer described in subsection (b).

SEC. 9. RETENTION OF RECORDS.

(a) DUTY TO RETAIN RECORDS.—Any independent public or certified accountant who certifies a financial statement as required by the securities laws or any rule or regulation thereunder shall prepare and maintain for a period of no less than 7 years, final audit work papers and other information related to any accountants re-

port on such financial statements in sufficient detail to support the opinion or assertion reached in such accountants report. The Commission may prescribe rules specifying the application and requirements of this section.

(b) ACCOUNTANT'S REPORT.—For purposes of subsection (a), the term "accountant's report" means a document in which an accountant identifies a financial statement and sets forth his opinion regarding such financial statement or an assertion that an opinion cannot be expressed.

SEC. 10. REMOVAL OF UNFIT CORPORATE OFFICERS.

(a) REMOVAL IN JUDICIAL PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking "substantial unfitness" and inserting "unfitness".

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking "substantial unfitness" and inserting "unfitness".

(b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

(1) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

"(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following new subsection:

"(f) AUTHORITY TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.".

SEC. 11. DISGORGEMENT REQUIRED.

(a) ADMINISTRATIVE ACTIONS.—Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations to require disgorgement, in a proceeding pursuant to its authority under section 21A, 21B, or 21C (15 U.S.C. 78u–1, 78u–2, 78u–3), of salaries, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided

through securities transactions obtained by an officer or director of an issuer during or for a fiscal year or other reporting period if such officer or director engaged in misconduct resulting in, or made or caused to be made in, the filing of a financial statement for such fiscal year or reporting period which—

(1) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading,

(b) JUDICIAL PROCEEDINGS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

"(5) ADDITIONAL DISGORGEMENT AUTHORITY.—In any action or proceeding brought or instituted by the Commission under the securities laws against any person—

"(A) for engaging in misconduct resulting in, or making or causing to be made in, the filing of a financial statement which—

"(i) was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

"(ii) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or

"(B) for engaging in, causing, or aiding and abetting any other violation of the securities laws or the rules and regulations thereunder,

such person, in addition to being subject to any other appropriate order, may be required to disgorge any or all benefits received from any source in connection with the conduct constituting, causing, or aiding and abetting the violation, including (but not limited to) salary, commissions, fees, bonuses, options, profits from securities transactions, and losses avoided through securities transactions.".

SEC. 12. CEO AND CFO ACCOUNTABILITY FOR DISCLOSURE.

(a) REGULATIONS REQUIRED.—The Securities and Exchange Commission shall by rule require, for each company filing periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition

and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) DEADLINE.—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

SEC. 13. SECURITIES AND EXCHANGE COMMISSION AUTHORITY TO PROVIDE RELIEF.

(a) PROCEEDS OF ENRON AND ANDERSEN ENFORCEMENT ACTIONS.—If in any administrative or judicial proceeding brought by the Securities and Exchange Commission against—

(1) the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate for any violation of the securities laws; or

(2) Arthur Andersen L.L.C., any subsidiary or affiliate of Arthur Andersen L.L.C., or any general or limited partner of Arthur Andersen L.L.C., or such subsidiary or affiliate, for any violation of the securities laws with respect to any services performed for or in relation to the Enron Corporation, any subsidiary or affiliate of such Corporation, or any officer, director, or principal shareholder of such Corporation, subsidiary, or affiliate;

the Commission obtains an order providing for an accounting and disgorgement of funds, such disgorgement fund (including any ad-

dition to such fund required or permitted under this section) shall be allocated in accordance with the requirements of this section.

(b) PRIORITY FOR FORMER ENRON EMPLOYEES.—The Commission shall, by order, establish an allocation system for the disgorgement fund. Such system shall provide that, in allocating the disgorgement fund amount the victims of the securities laws violations described in subsection (a), the first priority shall be given to individuals who were employed by the Enron Corporation, or a subsidiary or affiliate of such Corporation, and who were participants in an individual account plan established by such Corporation, subsidiary, or affiliate. Such allocations among such individuals shall be in proportion to the extent to which the nonforfeitable accrued benefit of each such individual under the plan was invested in the securities of such Corporation, subsidiary, or affiliate.

(c) ADDITION OF CIVIL PENALTIES.—If, in any proceeding described in subsection (a), the Commission assesses and collects any civil penalty, the Commission shall, notwithstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the Securities Exchange Act of 1934, or any other provision of the securities laws, be payable to the disgorgement fund.

(d) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for the disgorgement fund. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (b).

(e) DEFINITIONS.—As used in this section:

(1) DISGORGEMENT FUND.—The term "disgorgement fund" means a disgorgement fund established in any administrative or judicial proceeding described in subsection (a).

(2) SUBSIDIARY OR AFFILIATE.—The term "subsidiary or affiliate" when used in relation to a person means any entity that controls, is controlled by, or is under common control with such person.

(3) OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER.—The term "officer, director, or principal shareholder" when used in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation, means any person that is subject to the requirements of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) in relation to the Enron Corporation, or any subsidiary or affiliate of such Corporation.

(4) NONFORFEITABLE; ACCRUED BENEFIT; INDIVIDUAL ACCOUNT PLAN.—The terms "nonforfeitable", "accrued benefit", and "individual account plan" have the meanings provided such terms, respectively, in paragraphs (19), (23), and (34) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(19), (23), (34)).

SEC. 14. AUTHORIZATION OF APPROPRIATIONS OF THE SECURITIES AND EXCHANGE COMMISSION.

In addition to any other funds authorized to be appropriated to the Securities and Exchange Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

(1) not less that $134,000,000 shall be available for the Division of Corporate Finance and for the Office of Chief Accountant;

(2) not less than $326,000,000 shall be available for the Division of Enforcement; and

(3) not less than $76,000,000 shall be available to implement section 8 of the Investor and Capital Markets Fee Relief Act, relating to pay comparability.

SEC. 15. ANALYST CONFLICTS OF INTEREST.

(a) STUDY AND REVIEW REQUIRED.—The Securities and Exchange Commission shall conduct a study and review of any final rules by any self-regulatory organization registered with the Commission pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) related to matters involving equity research analysts conflicts of interest. Such study and report shall include a review of the effectiveness of such final rules in addressing matters relating to the objectivity and integrity of equity research analyst reports and recommendations.

(b) REPORT REQUIRED.—The Securities and Exchange Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on such study and review no later than 180 days after any such final rules by any self-regulatory organization registered with the Commission pursuant to section 19 of the Securities Exchange Act of 1934 are approved by the Commission. Such report shall include recommendations to the Congress, including any recommendations for additional self-regulatory organization rulemaking regarding matters involving equity research analysts. The Commission shall annually submit an update on such review.

(c) ADDITIONAL RULES REQUIRED.—Unless the final rules reviewed by the Commission under subsections (a) and (b) contain the following provisions, the Commission shall, by rule—

(1) prohibit equity research analysts from—

(A) holding any beneficial interest in any equity security (as such term in defined in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)) in any issuer covered by such analyst; and

(B) receiving compensation based on the investment banking revenues of the firm with which the analyst is associated, or on the investment banking revenues of such firm and its affiliates, except that this prohibition shall not prohibit such an analyst from receiving compensation based on the overall revenues of such firm or of such firm and its affiliates;

(2) prohibit the investment banking department of such firm from having any input in the compensation, hiring, firing, or promotion of analysts; and

(3) require such self-regulatory organizations—

(A) to establish criteria for evaluating analyst research quality; and

(B) to require analyst compensation to be based principally on the quality of the equity research analyst's research.

SEC. 16. INDEPENDENT DIRECTORS.

(a) RULEMAKING REQUIRED.—The Commission shall adopt rules, effective no later than 6 months after the date of enactment of this Act, to require that the independent directors on the board of directors of any issuer of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) be nominated for election by a nominating committee that is composed exclusively of other independent directors of such issuer.

(b) INDEPENDENCE.—The rules required by subsection (a) shall require the same degree of independence for service on the nominating committee of an issuer as is required for purposes of service on the audit committee of an issuer by the listing standards concerning corporate governance of the exchange or association on which the securities of such issuer are listed.

SEC. 17. ENFORCEMENT OF AUDIT COMMITTEE GOVERNANCE PRACTICES.

The Commission shall revise its regulations pertaining to auditor independence to require that an accountant shall not be considered to be independent for purposes of certifying the financial statements or other documents of an issuer required to be filed with the Commission under the securities laws unless—

(1) an issuer's auditor is appointed by and reports directly to the audit committee of the board of directors or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors;

(2) the audit committee meets with the accountants engaged to perform such audit on a regular basis, at least quarterly; and

(3) the audit committee is provided with the opportunity to meet with such accountants without the attendance at such meetings of any officer, director, or other member of the issuer's senior management.

SEC. 18. REVIEW OF CORPORATE GOVERNANCE PRACTICES.

(a) STUDY OF CORPORATE PRACTICES.—The Commission shall conduct a study and review of current corporate governance standards and practices to determine whether such standards and practices are serving the best interests of shareholders. Such study and review shall include an analysis of—

(1) whether current standards and practices promote full disclosure of relevant information to shareholders;

(2) whether corporate codes of ethics are adequate to protect shareholders, and to what extent deviations from such codes are tolerated;

(3) to what extent conflicts of interests are aggressively reviewed, and whether adequate means for redressing such conflicts exist;

(4) to what extent sufficient legal protections exist or should be adopted to ensure that any manager who attempts to manipulate or unduly influence an audit will be subject to appropriate sanction and liability, including liability to investors or shareholders pursuing a private cause of action for such manipulation or undue influence;

(5) whether rules, standards, and practices relating to determining whether independent directors are in fact independent are adequate;

(6) whether rules, standards, and practices relating to the independence of directors serving on audit committees are uniformly applied and adequate to protect investor interests;

(7) whether the duties and responsibilities of audit committees should be established by the Commission; and

(8) what further or additional practices or standards might best protect investors and promote the interests of shareholders.

(b) PARTICIPATION OF STATE REGULATORS.—In conducting the study required under subsection (a), the Commission shall seek the views of the securities and corporate regulators of the various States.

(c) REPORT REQUIRED.—The Commission shall submit a report on the analysis required under subsection (a) as a part of the Commission's next annual report submitted after the date of enactment of this Act.

SEC. 19. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the last five years to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days of the date of enactment of this Act and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 20. STUDY OF CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market. Such study shall examine—

(1) the role of the credit rating agencies in the evaluation of issuers of securities;

(2) the importance of that role to investors and the functioning of the securities markets;

(3) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(4) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings;

(5) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers; and

(6) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the analysis required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after the date of enactment of this Act. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 21. STUDY OF INVESTMENT BANKS

(a) GAO STUDY.—The Comptroller General shall conduct a study on whether investment banks and financial advisors assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the role of the investment banks—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financing arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiber optic cable capacity, in designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions which may have been designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

(b) REPORT.—The General Accounting Office shall report to the Congress within 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 22. STUDY OF MODEL RULES FOR ATTORNEYS OF ISSUERS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the Model Rules of Professional Conduct promulgated by the American Bar Association and rules of professional conduct applicable to attorneys established by the Commission to determine—

(1) whether such rules provide sufficient guidance to attorneys representing corporate clients who are issuers required to file periodic disclosures under section 13 or 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o), as to the ethical responsibilities of such attorneys to—

(A) warn clients of possible fraudulent or illegal activities of such clients and possible consequences of such activities;

(B) disclose such fraudulent or illegal activities to appropriate regulatory or law enforcement authorities; and

(C) manage potential conflicts of interests with clients; and

(2) whether such rules provide sufficient protection to corporate shareholders, especially with regards to conflicts of interest between attorneys and their corporate clients.

(b) REPORT REQUIRED.—The Comptroller General shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of the study required by this section. Such report shall include any recommendations of the General Accounting Office with regards to—

(1) possible changes to the Model Rules and the rules of professional conduct applicable to attorneys established by the Commission to provide increased protection to shareholders;

(2) whether restrictions should be imposed to require that an attorney, having represented a corporation or having been employed by a firm which represented a corporation, may not be employed as general counsel to that corporation until a certain period of time has expired; and

(3) regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 23. ENFORCEMENT AUTHORITY.

For the purposes of enforcing and carrying out this Act, the Commission shall have all of the authorities granted to the Commission under the securities laws. Actions of the Commission under this Act, including actions on rules or regulations, shall be subject to review in the same manner as actions under the securities laws.

SEC. 24. EXCLUSION FOR INVESTMENT COMPANIES.

Sections 4, 6, 9, and 15 of this Act shall not apply to an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 25. DEFINITIONS.

As used in this Act:

(1) BLACKOUT PERIOD.—The term "blackout period" with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable indi-

vidual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(2) BOARDS OF ACCOUNTANCY OF THE STATES.—The term "boards of accountancy of the States" means any organization or association chartered or approved under the law of any State with responsibility for the registration, supervision, or regulation of accountants.

(3) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term "individual account plan" has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term "issuer" shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

(6) PERSON ASSOCIATED WITH AN ACCOUNTANT.—The term "person associated with an accountant" means any partner, officer, director, or manager of such accountant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such accountant, or any employee of such accountant who performs a supervisory role in the auditing process.

(7) PUBLIC REGULATORY ORGANIZATION.—The term "public regulatory organization" means the public regulatory organization established by the Commission under subsection (b) of section 2.

(8) SECURITIES LAWS.—The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), notwithstanding any contrary provision of any such Act.

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